F. C. MINKLER III
F. C. MINKLER, M.D.

IBLA 81-986 Decided October 27, 1981

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 43445.

Reversed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

> Where an applicant places the name of another party in interest on his simultaneous oil and gas lease application and files a statement indicating that they have an oral agreement under which he has a 25 percent interest and the other party a 75 percent interest and that they have agreed to divide expenses and proceeds based on those percentages, the applicant has satisfied the requirement of 43 CFR 3102.2-7(b) that the nature of their oral understanding be set forth.

APPEARANCES: Lewis C. Cox, Jr., Esq., and John S. Nelson, Esq., Roswell, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

F. C. Minkler III and F. C. Minkler, M.D., have appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 10, 1981, rejecting simultaneous oil and gas lease application NM 43445.

The application, signed by F. C. Minkler III, was drawn with first priority for parcel NM 49 in the December 1980 drawing. F. C. Minkler, M.D., is identified on the application as another party in interest. A statement submitted with the application reflects that F. C. Minkler, M.D., holds a 75 percent interest and F. C. Minkler III

holds a 25 percent interest and that they have an oral agreement "to divide expenses and proceeds based on above percentages, and to confer jointly to arrive at all decisions."

BLM rejected the application for failure to comply with 43 CFR 3102.2-7(b) 1/ asserting that appellants had not set forth the nature of their interests under the oral agreement. BLM states that "[t]he mere statement of other party in interest and the percentages of interest following their names is not adequate. We do not know if the percentages of interest are of record title interest or some other interest in the proposed lease." BLM cites Harry Reich, 27 IBLA 123 (1976), in support of its decision.

In their statement of reasons, appellants argue that 43 CFR 3102.2-7(b) requires only that they state the nature of their oral agreement which they did. That is in contrast, they point out, to the regulation in effect at the time the case of Harry Reich, supra, arose. The applicable regulation at that time, 43 CFR 3102.7 (1975), required the offeror and other parties in interest to provide a signed statement of "the nature and extent of the interest of each" in addition to the nature of the oral agreement. Appellants assert that the change in the regulation must be construed to mean that a statement as to the nature of their interests is no longer required or, if not, the regulation is unclear and therefore should be construed for their benefit anyway. Appellants urge that further definition of their interests does not aid the policies set out in 43 CFR 3100.0-5(b) concerning multiple filings and acreage limitations. It is enough to know that any interest exists for those purposes. Finally appellants suggest that their case more closely resembles Morris M. Cohen, 33 IBLA 365 (1978), wherein the Board reversed a BLM decision rejecting an oil and gas lease offer where the offeror and other parties in interest had submitted a statement indicating, in relevant part, that they had an oral agreement to share or own equally any lease obtained.

In Harry Reich, supra, two parties of the five who had an asserted interest signed the drawing entry card, and the space for listing other parties in interest was left blank. A copy of a statement dated 6 months earlier accompanied the card. There was no reference on the card to the separate statement and there was no declaration as to whether the parties' agreement was written or oral. The parties

1/ The pertinent regulation, 43 CFR 3102.2-7(b) states in relevant part:

"(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title."

described their relationship as "Partners in Interests" each holding a 20 percent interest. The Board affirmed BLM's rejection of the drawing entry card based on the failure to list the other parties in interest on the card, or at a minimum refer to an attachment, and based on a finding that the accompanying statement did not satisfy the regulatory requirements. After noting that there was no indication that the agreement was oral, we stated:

> [I]t is also unclear from the statement what the nature of the agreement among the parties is. We believe the mere statement of "PARTNERS IN INTEREST" and the percentages of interest following their names is not adequate. We do not know if the percentages of interest are of record title interest or some other interest in the proposed lease, nor is their characterization as partners in interest such a precise phrase of art which would adequately explain the nature of their interest.

27 IBLA at 129.

The sufficiency of a reference to percentages of interest was considered again in Morris M. Cohen, supra. In the case, the drawing entry card did not reflect the other deficiencies of the card in Harry Reich, supra. It listed the names of all interested parties and the attached statement explained that each of the undersigned were "in oral agreement owning equally but less than 10%." We held that this statement clearly set forth the nature of the agreement and extent of each parties' interest because the phrase "owning equally" could "only be interpreted to mean that they are each on the same plane or level with respect to the rights obtained by being drawn number one * * *. These equal rights apply to whatever rights the winning card is entitled to receive." 33 IBLA at 369.

[1] As appellants have pointed out, 43 CFR 3102.2-7(b) requires a statement setting forth the nature of any oral understanding between parties in interest, in contrast to the regulation in effect at the time of the Reich and Cohen cases which required a statement setting forth the nature and extent of the interest of each party and the nature of the agreement if oral. In a recent case arising under the new regulation, the Board held that a simple reference to a 50-50 percentage division of interest may reasonably be regarded as referring to 50 percent of all of any interest acquired by the applicant in the absence of any language suggesting that either party's interest is limited or enhanced in any way. Phillip E. Flanagan, 57 IBLA 357 (1981). In the instant case, we find that appellants also have satisfied the requirements of 43 CFR 3102.2-7(b). They properly identified themselves as applicant and another party in interest and labeled their agreement as oral. They reported that the applicant held a 25 percent interest and the other party in interest a 75 percent interest and further indicated that their agreement is to divide expenses and

proceeds in those proportions. Based on this statement, we find that, as in Morris M. Cohen, supra, and Phillip E. Flanagan, supra, appellants intended to divide all of any interest that their winning application entitled the parties to receive. No further elaboration is necessary under the current regulation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the New Mexico State Office, BLM, for issuance of the lease if all else be regular.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge